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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OCT 12 2005

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

10
12 **UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

14
16 Marco T. Barbanti, a single person,
18 Plaintiff,
20 vs.

CV-05-318-RHW

22 Beneficial Washington Inc. d/b/a
Beneficial Mortgage Co. of Washington, a
24 Delaware corporation; David A. Weibel
and Jane Doe Weibel, husband and wife;
26 Bishop, White & Marshall, P.S., a
Washington professional services
28 corporation.; Household International,
30 Inc.;

COMPLAINT FOR DECLARATORY
RELIEF, VIOLATIONS OF THE FAIR
DEBT COLLECTION PRACTICES ACT,
AND FOR DAMAGES

32 Defendants.

34
36 The Plaintiff, Marco T. Barbanti, by and through his attorney, Timothy W. Durkop of Durkop Law
38 Office, alleges the following:

40 1. Jurisdiction of this Court arises under 15 USC Section 1692k(d) and is based on Federal

42 Question jurisdiction. This Court has jurisdiction over the state law claims pursuant to 28 USC

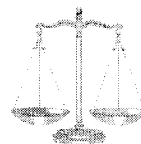
ORIGINAL
**COMPLAINT FOR VIOLATIONS
OF THE FAIR DEBT COLLECTION
PRACTICES ACT - 1**



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Section 1367. Declaratory relief is available pursuant to 28 USC Sections 2201 and 2202.

2. Plaintiff is a “consumer” as defined by the FDCPA, 15 USC Section 1692a(3). The debt which is the subject of this litigation is for personal, family, or household purposes.
3. Defendants were attempting to collect a “debt” as defined by FDCPA, 15 USC Section 1692a(5).
4. The alleged debt was an obligation or an alleged obligation of the Plaintiff to pay money arising out of a transaction primarily for personal, family, or household purposes. The security for the debt consists of two deeds of trust on two pieces of real property located in Spokane County, Washington namely: the single family residence located at 7 N. McCabe Road, Spokane Valley, WA; and the single family residence located at 1306 W. Mallon, Spokane, WA. The Plaintiff incurred the debt in April, 1997.
5. Defendants are each a “debt collector” as defined by FDCPA, 15 USC Section 1692a(6).
6. Now, and at all relevant times, Plaintiff was a resident of the State of Washington residing within the territorial jurisdictional areas of the United States District Court for the Eastern District of Washington.
7. Defendant David A. Weibel (hereinafter referred to as “Defendant Weibel”) is a “debt collector” engaged in the business of collecting debts within the State of Washington which were originally owed another. Defendant David A. Weibel is the Assistant Secretary of Bishop, White & Marshall, P.S. whose principal place of business within the state of Washington is believed to be 720 Olive Way, Suite 1301, Seattle, WA 98101. Defendant Jane Doe Weibel is David Weibel’s spouse, if one exists. All actions of Defendant Weibel benefitted his marital



community as well as him personally.

8. Defendant Bishop, White & Marshall, P.S. (hereinafter referred to as "Defendant Bishop, White") is, on information and belief, a professional services corporation organized under the laws of the State of Washington and is a "debt collector" engaged in the business of collecting debts within the State of Washington which were originally owed another. Defendant Bishop, White's principal place of business in the State of Washington is believed to be 720 Olive Way, Suite 1301, Seattle, WA 98101.
9. On information and belief, Defendant Beneficial Washington Inc. d/b/a Beneficial Mortgage Co. of Washington (hereinafter referred to as "Defendant Beneficial") is a Delaware corporation qualified to do business in the State of Washington. Defendant Beneficial maintains an office at E. 13213 Sprague Avenue, Spokane Valley, WA 99216. Defendant Beneficial does business as a "debt collector" in the Eastern District of Washington of the United States District Court as defined by the FDCPA, 15 USC Section 1692a(6).
10. On information and belief, Defendant, Household International Inc., (hereinafter Household) is a Delaware corporation which has not qualified to do business in the State of Washington. Defendant Beneficial maintains no office in Washington state. Defendant Beneficial does business as a "debt collector" in the Eastern District of Washington of the United States District Court as defined by the FDCPA, 15 USC Section 1692a(6).
11. Each Defendant's actions were taken for the benefit of the other defendants.
12. The principal purpose of each Defendant's business activities within the State of Washington is the collection of debts originally owed another using the mails and telephone, and



2 Defendants each regularly attempt to collect debts alleged to be due another or originally owed
4 to another. Defendants were each doing business as a "debt collector" in the Eastern District
6 of Washington of the United States District Court as defined By the FDCPA 15 USC Section
8 1692a(6).

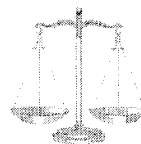
10 13. The Defendants' primary collection activities included collecting money and foreclosing deeds
12 of trust as provided by RCW 61.24 et seq.

14 14. On or about September 6, 2005 Defendants Weibel and Bishop, White sent Plaintiff a "Notice
16 of Default" (hereinafter referred to as "NOD") using the United States mails in an attempt to
18 collect a debt. The NOD carried the standard notices required by 15 USC Section 1692(g) of
20 the Fair Debt Collection Practices Act. A true and correct copy of the NOD is attached to this
22 complaint and marked Exhibit 1.

24 15. At sometime in April, 2005 Defendant Beneficial sent Plaintiff an account billing statement
26 using the United States mails. The account billing statement showed an amount due of
28 \$7510.07. Plaintiff paid the sum of \$7510.07 as per the stated amount due by cashier's check
30 which was mailed to Defendant Beneficial at its mailing address provided on the account
32 billing statement.

34 16. On October 3, 2005, Defendant Beneficial drew a check in the amount of \$800.06 and sent this
36 check to the plaintiff. Beneficial stated that it had determined that plaintiff was entitled to a
38 refund. This event occurred after the alleged default.

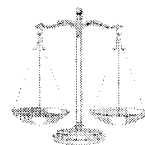
40 17. The bank which issued the cashier's check has confirmed for the Plaintiff that the cashier's
42 check has been cashed by Defendant Beneficial.



- 2 18. Defendant Beneficial has failed to send Plaintiff any other or further account billing statements
4 since the April, 2005 account billing statement which Plaintiff paid in full.
- 6 19. The NOD issued by Defendant Weibel and Defendant Bishop, White, P.S. states in Section 2
8 thereof that Plaintiff is delinquent and has failed to pay monthly payments from October 1,
10 2004 through September 1, 2005 for a total claimed due of \$8987.85 and seeks to collect said
12 sum from Plaintiff plus other fees, and charges.
- 14 20. The amount alleged due in Section 2 of the NOD is incorrect and is contradicted by the account
16 billing statement sent by Defendant Beneficial. In the NOD the Defendants are attempting to
18 collect monthly payments which the Plaintiff has already paid in full. The April, 2005 billing
20 from Defendant Beneficial outlined all monies owed by Plaintiff on this account, which
22 Plaintiff paid in full. Therefore the claim that Plaintiff is in arrears for payments dating back
24 to October, 2004 is wrong and is contradicted by the monthly statement issued by Defendant
26 Beneficial.
- 28 21. Defendant Beneficial has failed to bill Plaintiff for any monthly payments after the April, 2005
30 billing.
- 32 22. Section 2 of the NOD states that Plaintiff owes one payment in the amount of \$682.63 and
34 eleven payments at \$755.02. These amounts are not reflected in the monthly payments amounts
36 in the previous billing statements issued by Defendant Beneficial. Previous billings from
38 Defendant Beneficial showed the monthly payment on this account as being \$730.89.
40 Representatives of Defendant Beneficial have previously informed Plaintiff that the monthly
42 payment amount on this account was \$730.89.



- 2 23. The NOD in Exhibit 1 states that the beneficiary has declared a default under two (2) deeds of
4 trust, specifically the deed of trust recorded under Auditor's File No. 4098945 and the deed of
6 trust recorded under Auditor's File No. 4098946 both in the records of Spokane County, WA.
- 8 24. Section 2 of the NOD which itemizes the alleged defaults in making monthly payments fails
10 to itemize the alleged defaults attributed to each deed of trust as required by RCW
12 61.24.030(7). In addition to failing to itemize the alleged defaults with respect to each deed of
14 trust for which a default had been declared, the NOD fails to comply with RCW Chapter 61.24
16 because it commences a non judicial deed of trust foreclosure under two separate deeds of trust
18 in the same NOD. Failure to itemize the alleged defaults on each deed of trust as required by
20 RCW Chapter 61.24 denies the Plaintiff the ability to cure one or both of the defaults alleged
22 under the separate deeds of trust. The failure to itemize the alleged defaults arising under each
24 separate deed of trust denies the Plaintiff his rights under RCW Chapter 61.24 to challenge the
26 accuracy of the alleged defaults for each deed of trust. The failure to itemize the separate
28 defaults under each deed of trust puts both of Plaintiff's pieces of real property in jeopardy of
30 foreclosure when a bid on only one piece of property could possibly satisfy the obligation as
32 per RCW 61.24.100.
- 34 25. Section 3 of the NOD which is entitled "Other Charges, Costs and Fees" contains a charge in
36 the amount of \$425.00 for "Trustee's Fee" which Plaintiff is being required to pay as a
38 precondition to reinstating the obligation for which the defaults have been alleged in the NOD.
40 The trustee's fee is for the services of Defendant Weibel and Defendant Bishop, White.
42



- 2 26. Section 3 of the NOD which is entitled "Other Charges, Costs and Fees" contains a charge in
4 the amount of \$4847.74 labeled for "Lender – Other". This charge is not documented,
6 identified or itemized as required by RCW 61.24.030 (7).
- 8 27. Section 3 of the NOD which is entitled "Other Charges, Costs and Fees" contains a charge in
10 the amount of \$20.00 labeled for "Recording (Estimated)". Plaintiff has been unable to find any
12 document in the records of Spokane County, WA which the Defendants have recorded prior
14 to the mailing of the NOD to justify this imposition of this charge as a precondition to
16 reinstatement of the obligation.
- 18 28. Defendants Weibel and Bishop, White have violated the Fair Debt Collection Practices Act for
20 reasons including but not limited to: attempting to collect monthly payments which the Plaintiff
22 has already paid; failing to itemize the alleged defaults under the separate deeds of trust for
24 which non judicial foreclosure proceedings have been commenced; requiring the Plaintiff to
26 pay an unexplained sum labeled "Lender - Other" as a condition to reinstatement; requiring the
28 Plaintiff to pay a charge for recording a document when no apparent recording of a document
30 has taken place; and alleging amounts due as a monthly payments which are inconsistent with
32 the amounts provided by Defendant Beneficial to the Plaintiff.
- 34 29. The Defendants' actions constitute multiple violations of the Fair Debt Collection Practices
36 Act.
- 38 30. The Defendants' actions constitute a breach of their contract to allow the Plaintiff to cure the
40 default under each deed of trust and under the related obligation.
42



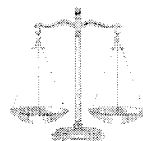
2 31. The Defendants' actions are in violation of the laws of the State of Washington governing the
4 non judicial foreclosure of deeds of trust and are also a violation of the Fair Debt Collection
6 Practices Act.

8 32. The non judicial deed of trust foreclosure proceeding commenced by Defendants Weibel,
10 Bishop, White, and Beneficial puts the Plaintiff in jeopardy of losing the two (2) pieces of real
12 property which are the subject of this action. Plaintiff estimates that the fair market value of
14 these two (2) pieces of real property to be in excess \$300,000.00. Plaintiff's equity in these
16 properties, after allowing for the total amount of indebtedness as alleged on page 1 of the NOD
18 (Exhibit 1) is approximately \$187,000.00.

20 33. The non judicial deed of trust foreclosure proceeding commenced by the Defendants based
22 upon incorrect and erroneous alleged defaults jeopardizes the Plaintiff's equity in the subject
24 properties.

26 WHEREFORE, Plaintiff prays for the following relief:

- 28 1. An award of general and special damages for the Plaintiff in the amount proven at trial.
- 30 2. An award of statutory damages of \$1,000.00 against each Defendant pursuant to 15 USC
32 Section 1692(k)(2)(A) for each violation of the act.
- 34 3. An award of attorney fees and costs as provided by the Fair Debt Collection Act and under
36 Washington law as provided for in the deeds of trust.
- 38 4. A declaratory judgment which declares that the NOD is based upon incorrect and erroneous
40 allegations of default and is void, invalid and in violation of governing law.
- 42



- 2 5. A declaratory judgment which declares the correct amount of monthly payments due, if any,
4 on the obligations secured by the herein referenced deeds of trust and a declaratory judgment
6 that reinstates the Plaintiff's obligations secured by the herein referenced deeds of trust
8 immediately upon payment of the correct amount of monthly payments due by Plaintiff.
- 10 6. A declaratory judgment voiding the imposition of all fees and costs listed in the NOD (Exhibit
12 1) as a condition to reinstatement.
- 14 7. An award of costs of the lawsuit.
- 16 8. Any other relief the court deems proper.

18
20 *October 10, 2005*

22 Dated: _____

Tw

Timothy W. Durkop 22985
Attorney for the Plaintiff

